

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isaac Sims,)	C/A No. 7:11-03489-JMC-JDA
)	
Plaintiff,)	
)	
vs.)	
)	Report and Recommendation
City of Spartanburg,)	
)	
Defendant.)	

This case is before the Court because of Plaintiff's failure to comply with Orders of this Court, and because of Plaintiff's failure to prosecute this case in a timely manner. This case was filed *pro se* on December 22, 2011. (Entry No. 1). An Order was issued on December 28, 2011, directing Plaintiff to submit documents required to bring this case into proper form for consideration of whether service of process should be authorized. (Entry No. 11). Specifically, Plaintiff was ordered to provide service documents (fully completed summons and Form USM-285), which are necessary for possible service of process on the Defendant. The Order stated: **"If Plaintiff does not bring this case into proper form within the time permitted by this Order, this case may be dismissed for failure to prosecute and failure to comply with an order of this Court under Rule 41 of the Federal Rules of Civil Procedure."** *Id.* Plaintiff failed to comply with the Order by the deadline of January 23, 2012. However, Plaintiff did call the Office of the Clerk of Court prior to the deadline seeking clarification of the Order. Therefore, on February 3, 2012, a second Order was issued giving Plaintiff fourteen (14) additional days and one final opportunity to bring this case into proper form for initial review. (Entry No. 17). Plaintiff was again warned that failure to respond to the Order would subject his case to dismissal.

The deadline for compliance lapsed on February 27, 2012, and Plaintiff has failed to respond to the Order or provide the required service documents. Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978), to the circumstances of this case, Plaintiff's failure to respond to the Court's Order indicates an intent on Plaintiff's part not to prosecute this case. See also *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962)(upholding district court's *sua sponte* dismissal of plaintiff's complaint pursuant to Rule 41(b)); *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989)(dismissal appropriate sanction where litigant disregarded court order despite warning that failure to comply would result in dismissal).

RECOMMENDATION

Accordingly, it is recommended that this case be dismissed *without prejudice* due to Plaintiff's failure to comply with this Court's Orders and failure to prosecute this case. See Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a Plaintiff fails to comply with an order of the court).

IT IS SO RECOMMENDED.

March 9, 2012
Greenville, South Carolina

s/Jacquelyn D. Austin
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).